plaintiff had failed to perform some engagement, and, by reason of such default, had been driven into bankruptcy, and thus lost all his property and business, no one would dream of making the defendant responsible for the loss. We should be loth to believe, if history did not afford authentic evidence of the fact, that learned counsellors would be able to present such a claim before any court with a grave face. Even less remote consequences than those before stated, by way of special damages, such as the failure to harvest crops, in consequence of the loss of the animal, could not be recovered. See opinions of SHAW, Ch. J., and THOMAS, J., dissenting in *Marble* v. *City of Worcester*, 4 Gray 395, where this question is learnedly and ably discussed.

But we cannot comprehend why the plaintiff's ox, having wandered across a portion of plaintiff's land, and thus finally come upon the railway across another man's land, through defect of fence, which it was not the defendant's duty to maintain, can relieve him from the consequences of his first neglect. If it had been through the plaintiff's negligence that the animal had finally come upon the track, it might have made a case of contributory negligence, which would preclude a recovery. But when the destruction of the animal was the natural consequence of the defendant's negligence, and nothing intervened to give any new cause of action or any new ground of defence, but the impetus of the original negligence continued without interruption, and in its natural course, to the moment of injury, we must conclude there is no just ground of escape on the part of the defendants.

I. F. R.

United States Circuit Court, District of Iowa. In Admiralty.

N. W. PACKET COMPANY *v.* ATLEE.

The District Court as a court of admiralty has jurisdiction of a cause wherein the libellant seeks to recover damages caused to his vessel by a pier erected by the respondent without legal authority within the navigable channel of the Mississippi river.

A riparian proprietor on the Mississippi, although he be the owner of a saw-mill thereon, has no right, without legislative authority, to erect a solid pier of masonry within the navigable channel of the river, in order to fasten thereto a boom for the protection of logs; and such a pier comes within the legal notion of a nuisance.

The respondent held to be in fault for failing to keep such a pier lighted at night, in consequence of which the libellant's vessel was sunk and her cargo injured.

Extent of riparian rights on the Mississippi river considered.

THE packet company filed a libel in admiralty in the District Court, against the respondent, Atlee, to recover damages for injuries to the barge Reaney and cargo, by reason of its running against a pier placed in the Mississippi river by the respondent. The accident happened about 11 o'clock on the night of the 23d

day of April 1871. The steamboat Sheridan, with the barge Reaney in tow, lashed to her starboard side, was descending the river from St. Paul to St. Louis, this being her first trip during that season, and struck the upper pier of the respondent. The night was dark and there was no light upon the pier at the time.

The respondent was proprietor of a tract of land on the Mississippi river, on which he had built saw-mills, and had for some years moored his rafts of lumber in the river opposite his land until the logs were sawed, and these rafts frequently extended further into the river than the pier in question. In the winter of 1870–71, respondent built a boom several hundred feet long, and protected it by two piers built in the river. Whether the pier in question, the upper one, was in the channel or not was a point in dispute. The following facts appeared to be established: The pier is 29 feet by 22 in size, and about 25 high from the bed of the river, rising a few feet above the surface of the water. It is from 100 to 150 feet from the bank, according to the stage of the water. The water is about 12 feet deep along the outside of the pier at a low stage of the river; at the time of the collision the water was about 20 feet deep at the pier. About 600 or 700 feet above is a bar, or delta from a creek, which projects into the river about 300 feet, from which point the bank of the river recedes, so that the complainant's land on the bank is about 200 feet *in* from where a straight line drawn from the point of the delta to the shore below would come.

Outside of this pier there is a free passage-way for boats several hundred feet in width. The pilot of the Sheridan was skilful and competent, and fully acquainted with the river, but he had no knowledge of the existence of the pier. He was employed as a pilot during the whole of 1869 on the upper Mississippi, but not in 1870. The pier was constructed in the winter of 1870–1, and the Sheridan at the time of the collision was making her first trip for the season. He did not keep the boat to the middle of the channel, but ran or allowed the boat to run where the pier stood. The barge struck the upper outside of the pier (which projected above the water only a few feet) and sank almost immediately. After the collision the respondent kept lights burning upon the piers. The water is deep enough even in a low stage to allow steamboats to pass inside the piers erected by the respondent, and the testimony of more than a dozen pilots was to the effect that

before the erection of the piers they had often run their vessels over and about the place where these piers stand.

The District Court decided that both parties were in fault—the respondent for failing to keep lights on the pier, and the boat for not keeping more in the middle of the stream—and divided the damages in accordance with the admiralty rule. The total damages reported by the commissioner were $2147.86, and from the decree confirming this report the libellants appeal.

Howell & Rice and *J. H. Davidson*, for the libellants.

McCrary, Miller & McCrary, for the respondent.

DILLON, Circuit J.—The jurisdiction of the District Court in admiralty of the case made by the libel, is settled by the Supreme Court of the United States, and need not be further noticed: 23 How. 209.

The *right* of the respondent to erect and maintain these piers at the place and under the circumstances stated, presents the main question in the case, and it is a question of great importance. The court may properly take notice that a large portion of all the pine lumber which is supplied from the pine regions of Wisconsin and Minnesota is floated down the Mississippi in log-rafts, which are owned by or sold to owners of mills located upon the banks of the river. It is the almost invariable practice of the mill-owner to moor the logs in the stream in front of or near his mill, and the logs, in general, remain in the stream until they are taken therefrom, one by one, into the mill to be sawed.

The more effectually to secure or protect his logs, the respondent built the piers and boom in question. It is conceded that there is no statute of Congress or of the state authorizing the erection. Its rightfulness depends, therefore, upon the general principles of law.

The respondent claims the right as riparian proprietor, and it follows of course that if he has the right, every other like proprietor has the same right.

Notwithstanding the able argument contained in the opinion of his honor in the court below, I have not been able to reach the conclusion that the right claimed for the respondent exists; and although on a question of this kind, which he has so thoroughly

considered, I may well distrust the correctness of my own views, still it is my duty to decide it according to my own judgment. It is not my purpose to enter upon any extended argument against the right which is set up by respondent, but only to indicate briefly the grounds of my opinion.

The paramount right attaching to the Mississippi river is the right to its free and unobstructed navigation. This is a public right. It exists in favor of the whole public, and for all vessels, small as well as large, and for rafts equally with boats. Any erection or obstruction not authorized by competent legislative enactment, which materially interferes with the paramount right of navigation is unlawful, and comes within the legal notion of a nuisance. The analogy between the river and a highway or street as respects public rights is very close. The river is a highway or waterway for the use of the public, just the same as a street or highway; and individuals, for their own convenience, have no more right, without legislative authority, to obstruct the one than they have to encumber or obstruct the other. Their rights in both cases are confined to a reasonable use of that which is common to all, and which may not be exclusively appropriated by any.

Telegraph poles, or gas-posts, or market-houses in the public streets, are or may be convenient and useful not only to individuals but the public, but if put there without legislative sanction, they are in law nuisances. And so with any unauthorized individual appropriation of any part of a street. Much more clearly would the law pronounce illegal any exclusive appropriation of a portion of the public way by individuals for their own convenience by erections or acts which would or might endanger the safety of the public.

The same principles apply to the rights of the public in the river. The adjacent owner may make a reasonable use of the river and the banks. He may, doubtless, land his rafts and fasten them to the bank in front of his property. How long he might keep his logs stationary in the water we need not inquire, for the injury to the libellant's vessel was not caused by coming in contact with logs thus moored by the riparian proprietor; but by piers of solid masonry built at a point which the evidence establishes to be within the navigable channel of the river, even at its lowest stage. No individual can of his own motion, and for his own advantage, abridge or infringe the rights of the public in respect to

the navigation of the river. A pier built within the navigable channel, that is, at a point in the river where vessels may go, and where they have a right to go, is an unlawful structure in the eye of the law. Indeed, any permanent structure which interferes with, or which may endanger or obstruct navigation is unlawful, and cannot be legalized by any considerations of utility or otherwise, except by direct legislative authority.

Accordingly, it has been held that the erection and maintenance without legislative permission of a dam in the Wisconsin river, at a place where it is navigable in fact, is unlawful whether it does or does not interfere with the navigation of the river: *Wis. Imp. Co.* v. *Lyons*, 30 or 31 Wis.

It is suggested that there is an analogy between piers like those erected by the respondent and bridges across navigable streams. But though bridges across such streams may be of great private convenience and public utility, still legislative sanction is necessary to legalize their existence.

Again, it is argued that the right of the respondent to build and maintain the piers in question, rests, or may be rested, upon the same grounds upon which the right of the riparian proprietor to erect wharves and landing-places for his own or the public use. Structures of the character just named, connected with the shore, when not erected in violation of legislative regulations, when they do not obstruct the paramount right of navigation, and are not nuisances in fact, have the sanction of long usage in this country, and under the qualifications suggested may be lawfully erected; but the right, it is said, must be understood as terminating at the point of navigability: *Dutton* v. *Strong*, 1 Black 23, 32; *Yates* v. *Milwaukee*, 10 Wall. 497.

The reason why wharves and landing-places are thus sanctioned is that they are aids to navigation, and necessary for the reasonable enjoyment of the respective rights of the public and the riparian proprietor. But the right to erect piers in the navigable channel in order to construct a boom for the protection and detention of logs until the riparian proprietor may manufacture them, rests upon no such usage; nor can such be justly said to be aids to navigation, which it is to be remembered is the paramount right, not in the least to be infringed without legislative sanction.

If the piers in question be considered unlawful the liability of the defendant is clear. The pilot of the libellant's boat had no

knowledge of the piers, and there was no light upon them to warn him of their existence. In my judgment he is not to be held in fault for not knowing that there was an unlawful obstruction in the river and steering further out in the stream. Undoubtedly if he had known of the pier, and if it had been lighted so tha he could have seen its location, it would have been his duty, if practicable, to have kept his boat away from it. In my opinion the fault lies wholly with the respondent. This is clearly so if the pier on which the boat was injured was not lawfully there. But suppose I am in error in the above view, I still think the fault is with the respondent, because of the failure to have lights upon it. The river was high, it was at a season of the year when usually there were no rafts moored in the stream, and it was not unlikely that boats might run against it. I cannot think the pilot is in fault under the circumstances for not having kept farther out in the stream. So that, in any view of the case, I consider the respondent liable for all the damages.

It is suggested that these views will occasion alarm to mill-owners upon the Mississippi. But I perceive no cause for apprehension.

If it should be deemed of sufficient importance, Congress would doubtless concede all necessary rights and regulate the mode of their enjoyment. This may perhaps be also done by the state in the absence of action by Congress. But without such legislative action it is not probable that mill-owners will be disturbed in the exercise of their accustomed privileges, so long as they are reasonably enjoyed and do not essentially interfere with or endanger the paramount right of a navigator.

The decree below will be reversed, and a decree entered here for the appellant against the defendant for the $2147.86 reported by the commissioners.

United States Circuit Court, Eastern Circuit of Missouri.

CARRIE HOLABIRD *v.* ATLANTIC MUTUAL LIFE INSURANCE COMPANY.

Marriage, by the law of Missouri, is a civil contract, and no special ceremony is essential to its validity; and the same law prevails in Illinois and Tennessee.

Although at the time of the marriage ceremony, the pretended husband had a